IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 10.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No.1047 of 2001

Suresh Kumar .. Appellant

Vs.

State by
The Inspector of Police,
Bommidi Police Station,
Dharmapuri District .. Respondent

Prayer:- This appeal has been preferred against the judgment dated 9.10.2001 made in S.C.No.191 of 2000 on the file of the I Additional sessions Judge, Dharmapuri at Krishnagiri.

For Appellant :Mr.A.K.Kumaraswamy
For Respondent :Mr.V.R.Balasubramanian
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the judgment in S.C.No.191 of 2000 on the file of I Additional Sessions Judge, Dhamapuri at Krishnagiri. The accused, who is the brother's son of one Lakshmi, permanently kept mistress of the deceased, who had faced a charge of murder under Section 302 IPC, but was convicted under Section 304(ii) IPC and sentenced to undergo 7 years RI by the learned Sessions Judge, is the appellant herein.

2.The committal magistrate, Judicial Magistrate No.II, Dhamapuri, after taking the charge sheet on file as PRC.No.92 of 1999, had issued summons to the accused and on his appearance furnished copies to the accused under section 207 of Cr.P.C., and since the case is exclusively triable by the Court of Sessions, the learned Judicial Magistrate Committed the case to the Court of Sessions under Section 209 of Cr.P.C.

3.The learned I Additional Sessions Judge, Dhamapuri at Krishnagiri, had framed charges under Section 302 IPC against the accused on his appearance and explained and when questioned the accused pleaded not guilty. Before the trial Court P.W.1 to P.W.10 were examined, Ex.P.1 to Ex.P.16 were exhibited and M.O.1 to M.O.2 were marked.

4.P.W.1 is the ocular witness to the occurrence, who is having an electrical shop at Bommidi and he is related to the deceased. He would admit that the deceased Abdul Rahim was having illicit intimacy with

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

P.W.2-Lakshmi and both were residing in his garden house at Kottavur and on 14.2.1999 at about 4.45 pm he went to the garden house of the deceased at his request to prepare an estimate for providing electricity connection in the said garden house of the deceased and while he was talking to P.W.2-Lakshmi in the house, he saw the accused, who was present just before his arrival to the said house, and on seeing him left towards the well and the deceased Abdul Rahim also left the house by saying that he will come back after washing his face and that when he entered into the house to prepare the estimate regarding the electricity accessories required for making electrical work in the house, he heard a distress call from Abdul Rahim, to respond he immediately rushed to the place of occurrence ie., near the well followed by Lakshmi, who was at that time preparing tea in the kitchen. He would depose that the accused by saying that only if Abdul Rahim dies, he will get the properties, pushed Abdul Rahim into the well followed by dropping two big granite stones into the well. When he made an attempt to apprehend the accused, he criminally intimidated by saying that he (P.W.1) will also met with the same fate and ran away from the place of occurrence. Thereafter with the help of Noorbasha and others, he extricated the body from the well in a cot and preferred Ex.P.1-complaint at about 7.00 pm on the same night with Bommidi Police, who came in the morning to the place of occurrence and enquired him. He has identified M.O.1 & M.O.2 are the granite stones dropped by the accused in to the well at the time of occurrence after pushing down Abdul Rahim into the well.

5.P.W.2-Lakshmi would depose that the accused is her brother's son and that she was given in marriage some 28 years prior to the date of occurrence to one Palaniswamy as a third wife, while the second wife Pavayee was alive and after the death of Palaniswamy his 5 acres of land was divided between her and Pavayee in equal moities and enjoyed the same after the death of her husband Palaniswamy, her brother Periyasamy, the father of the accused, came to Kottavur with his family. According to her, Abdul Rahim was taking care on her and he used to visit her house and with the joint venture of Abdul Rahim, she had purchased the land at Kottavur and constructed the house there and began to live with Abdul Rahim in the said house and that her brother Periyasamy was residing in 2 ½ acres of land, which he got under partition with Pavayee after the death of Palaniswamy Gounder. She would further depose that the garden at Kottavur and the house were purchased only in the name of the deceased Abdul Rahim, who had no issues. According to her, on the fateful day, the accused came to her house and was talking to her sitting on the varanda and at that time the deceased Abdul Rahim and P.W.1 also came to the house in order to prepare the estimate for providing electricity supply to the house. When Abdul Rahim left the house in order to wash his face, she heard a distress call from Abdul Rahim and immediately she along with P.W.1 came out of the house and saw the accused pushing down Abdul Rahim into the well and that when P.W.1 went near the well in order to rescue Abdul Rahim, the accused criminally intimidated him by saying that if he comes nearer he will also met with the same fate and with the help of Apsalkhan, Noor sahib, P.W.1 retrieved the body from a help of a cot from

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

the well and that P.W.1 went to the police station and preferred Ex.P.1-complaint with the police. She has identified M.O.3 as the dothi, M.O.4 shirt worn by the deceased at the time of occurrence. According to her, eight days prior to the occurrence, the accused enquired in whose name the properties stand and after knowing that the properties are in the name of Abdul Rahim, she could notice changes in his facial expression.

6.P.W.10 is the then Inspector of Police, Bommidi Police Station. According to him on 14.2.1999 at about 7.00 pm P.W.1 appeared in the police station and preferred Ex.P.1 complaint, which was registered under Bommidi Police Station Cr.No.92 of 1999 under Section 302 IPC. Ex.P.11 is the copy of the FIR. He has dispatched the express FIR to the concerned official including the Judicial Magistrate. Thereafter, he had proceeded to the place of occurrence at 8.15 pm and stayed there itself and on the next morning ie., on 15.2.1999 at about 6.30 am, he had prepared the observation mahazar Ex.P.2 in the presence of P.W.3 and another witness. He had drawn Ex.P.12-rough sketch in the presence of the same witnesses. He had conducted inquest on the corpse of the deceased in the presence of panchayatdars between 8.30 am and 10.00 am. Ex.P.13 is the inquest report. He has examined the witnesses and recorded their statements. He had sent the corpse for autopsy through P.W.9, who had handed over the corpse to the doctor P.W.6, who had conducted autopsy and issued Ex.P.7-postmortem certificate. The doctor has opined that due to asphyxia due to drowning the deceased would have died 18 to 20 hours prior to autopsy. Ex.P.9 is his final report.

7.P.W.7 is the doctor, who had examined the accused on 16.2.1999 at ahout 11.20 pm in the government hospital Dharmapuri and issued Ex.P.10 copy of the accident register. Thereafter, the doctor has noticed three simple injuries on his right forearm measuring 3 x 2 x ½ cm and on the left hand measuring 2 x 2 x ½ cm and on the fore head 2 x 2 x ½ cm. After the autopsy P.W.9 had recovered the wearing apparels of the deceased and handed over the same to the Investigating Officer.

8.P.W.4 is the VAO of Bommidi village, in whose presence P.W.10, after arresting the accused on 15.2.1999 at about 12.00 noon, recorded the voluntary confession statement of the accused. The admissible porition of the confession statement is Ex.P.14, on the basis of which, M.O.1 & M.O.2 granite stones used by the accused at the time of the occurrence were recovered from the well under Ex.P.3-mahazar in the presence of P.W.4. P.W.5 is the photographer, who took Ex.P.4 photoes of the corpse and Ex.P.5 are the negatives. P.W.8 is the FIR constable, who had delivered the express FIR to the Court at 10.00 am on 15.2.1999, after staying in the Judicial Magistrate court on the prevision night.

9.P.W.10 had sent the material objects connected with this case for chemical examination through the Judicial Magistrate. Ex.P.15 is the letter of requisition. After following the formalities P.W.10 had filed the charge sheet against the accused on 6.6.1999 under Section 302 IPC.

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

10.When incriminating circumstances were put to the accused under Section 313 of Cr.P.C., he denied his complicity with the crime. No evidence was let in on the side of the accused by way of defence. After going through the evidence both oral and documentary, the learned trial Judge has convicted the accused under Section 304(ii) IPC and sentenced to undergo 7 years RI, which necessitated the accused to prefer this appeal.

11.Now the point for determination in this appeal is whether the conviction and sentence by the learned trial judge in S.C.No.191 of 2000 under Section 304(ii) IPC, is sustainable for the reasons stated in the memorandum of appeal.

12.The Point:- Heard the learned counsel appearing for the appellant Mr.A.K.Kumaraswamy and the learned Additional Public Prosecutor Mr.V.R.Balasubramanian and considered their respective submissions.

12(a)Both the ocular witnesses P.W.1 & P.W.2 would cojently deposed before the trial Court that they saw when the accused pushing down the deceased Abdul Rahim into the well at the time of occurrence. The motive suggested by P.W.2, who is none other than the aunt of the accused, is that to grab at the property of 2 ½ acres of land which was allotted in a partition to P.W.2 after the death of her husband Palaniswamy Gounder between her and the second wife of Palanysamy Gounder and also to grab at the house and the land at Kottavur village, where the occurrence had taken place, the accused had murdered Abdul Rahim, with whom P.W.2 was having illicit intimacy. But both P.W.1 and P.W.2 would depose that immediately before the place of occurrence they heard the distress call from Abdul Rahim due to the assault made by the accused near the well. So it is clear from the evidence of P.W.1 & P.W.2 that immediately before the occurrence ie., pushing Abdul Rahim into the well by the accused, there was some quarrel between Abdul Rahim and the accused, which resulted in the accused pushing down Abdul Rahim into the well. The evidence of the doctor P.W.6, who had conducted postmortem on the corpse of the deceased, would go to show that the deceased would have died due to asphyxia due to the drowning. Ex.P.9 is his final report. Ex.P.7 is the postmortem report. Only under such circumstances, the learned trial judge has come to the correct conclusion that the accused is liable to be convicted only under Section 304(ii) IPC and accordingly convicted and sentenced the accused under Section 304(ii) IPC.

12(c) At this juncture, the learned counsel for the appellant Mr.A.K.Kumaraswamy would represent that the age of the victim was 73 at the time of the occurrence and the accused is aged 23 years and that the accused is now studying in the first year in D-Pharmacy course at Coimbatore College of Pharmacy Erode in the academic year 2006-2007. He has also produced the collage fees certificate relating to the accused. The learned counsel would submit that taking into consideration the facts and circumstances that the accused is now a student of D-Pharmacy and also the fact that even after the occurrence the accused cannot get the property neither of the deceased Abdul Rahim nor from P.W.2 as a legal heir, some leniency may be shown on the sentence. The learned counsel

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

would further submit that the accused was in prison for nearly three months and the remaining sentence may be converted into a fine so that the accused can pursue his studies. Heard the views of the learned Additional Public Prosecutor also on this point, who has no serious objection for modifying the sentence in the above lines. Point is answered accordingly.

13.In fine, the appeal is dismissed confirming the conviction passed by the learned trial Judge in S.C.No.191 of 2000 on the file of the I Additional Sessions Judge, Dharmapuri at Krishnagiri, under Section 304 (ii) IPC, but the sentence alone is modified to that of the period already undergone and a fine of Rs.25,000/- in default to undergo one year SI instead of 7 years RI. Time for payment of fine amount is 4 weeks from this date.

sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssv
To
1.The Additional Sessions Judge,
Dharmapuri at Krishnagiri.

2.The District & Sessions Judge,
Dharmapuri at Krishnagiri.

3.The Judicial Magistrate NO.II, Dharmapuri.

4.-do-The Chief Judicial Magistrate,
Dharmapuri at Krishnagiri.

5.The Public Prosecutor, High Court, Madras.

6.The District Collector,
Dharmapuri at Krishnagiri.

7.The Director General of Police,
Mylopure, Madras-4.

8.The Inspector of Police,
Bommidi Police Station, Dharmapuri.

+ 1 cc to Mr.T.Murugamanikkam Advocate SR.NO.50221

AD(CO)
RD 17.8.07

Crl.A.No.1047 of 2001

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/